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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,582	06/29/2000	Michael A. Falco	104108-0014	7601
24267	7590	05/10/2005	EXAMINER	
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			TRAN, THAI Q	
			ART UNIT	PAPER NUMBER
			2616	

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/606,582	Applicant(s) FALCO, MICHAEL A.	
	Examiner Thai Tran	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, ~~the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.~~

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-24.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed April 20, 2005 have been fully considered but they are not persuasive.

In re pages 1-3, applicant argues that there is no teaching or suggestion in Le of disassociating the RTP payload from any of the information provided in the uncompressed RTP packet header; there is no teaching or suggestion in a combination of Le and Agraharam to store for later retrieval and playback or transmission the payloads of received RTP packets and RTP timestamps or timestamp associated information without also storing the complete RTP header and additional indexing information; the combination does not teach or suggest a system or method that stores as packets the RTP payloads contained in received PTP packets and RTP timestamps that are derived from the RTP timestamps in the received RTP packets, as set forth in independent claims 1 and 13 and the claims that depend therefrom because Lee teaches including the entire header, albeit in compressed form, with the payload data for transmission, while Agraharam teaches adding a second, extension, header to the RTP packet before storing the thus-modified packet, in order to promote playback and/or retransmission; that the combination does not teach or suggest the method or system of playback back first and/or second retrieved records, i.e., retrieved RTP payload data, based simply on the stored RTP timestamps, as set forth in claims 4-6, 16-18; and that neither Le nor Agraharam teaches or suggests storing sampled data, i.e. data before transmission or data that may never to be transmitted, in the form of

RTP payloads and associated RTP timestamps that convey the time that the first samples in the respective payloads were taken, as described on page 7 of the current application.

In response, the examiner respectfully disagrees. First at all, it is noted claims do not recite disassociating the RTP payload from any of the information provided in the uncompressed RTP packet header and storing sampled data i.e. data before transmission or data that may never to be transmitted, in the form of RTP payloads and associated RTP timestamps that convey the time that the first samples in the respective payloads were taken. The specification is not the measure of invention. Therefore, limitations contained therein cannot be read into the claims for the purpose of avoiding the prior art. In re Sporck, 55 CCPA 743, 386 F.2d 924, 155 USPQ 687 (1968). Le does indeed disclose the alleged disassociating the RTP payload from any of the information provided in the uncompressed RTP packet header in page 2, paragraph #0025.

Secondly, as discussed in the last Office Action, the examiner has pointed out what each of the prior art references teaches and has indicated how and why these references would have been combined to arrive at the claimed invention. Applicant cannot show non-obviousness by attacking the references individually where, as here, the rejection is based on a combination of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). As discussed in the last Office Action, Le discloses the claimed generating RTP timestamp derived from the corresponding received RTP packet's received RTP timestamp (col. 29, lines 7-20) and does not specifically disclose the claimed storing in a persistent medium a stored record as stored packets of which

Art Unit: 2616

each corresponds to a respective one of the received RTP packets. Agraharam et al teaches that RTP packets can be stored and later retrieved on demand (page 2, paragraph #0025). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the capability of storing the RTP packets as taught by Agraharam et al into Le's system in order to store the RTP packets and later retrieve on demand. Agraharam et al cited only to suggest the capability of storing RTP packets and the storing of RTP packets has similar application whether the signal to be stored is the data disclosed in Le or the data of Agraharam et al. A reference must be considered not only for what it expressly teaches, but also for what it fairly suggests. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). The artisan is presumed to know something about the art apart from what references literally disclose. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The superior of storing RTP packets for later retrieving on demand as taught by Agraharam et al is all that would be needed to motivate the artisan to store the RTP packets of Le.

Finally, the alleged the method or system of playback back first and/or second retrieved records, i.e., retrieved RTP payload data, based simply on the stored RTP timestamps, as set forth in claims 4-6, 16-18 has been discussed in the last Office action and is disclosed in page 2, paragraph #0032).

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai Tran whose telephone number is (571) 272-7382. The examiner can normally be reached on Mon. to Friday, 8:00 AM to 5:30 PM.

Art Unit: 2616

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTQ



THAI TRAN
PRIMARY EXAMINER